

**ORIGINAL**

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Of Counsel  
Putbrese, Hunsaker & Trent

January 27, 2000

Re: Reply Comments of Escanaba License Corp.  
MM Docket No. 99-334, RM 9772  
Carney, MI  
DBMPC #15170

RECEIVED  
JAN 28 2000  
FCC MAIL ROOM

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., SW, Room TW-A325  
Washington, DC 20554

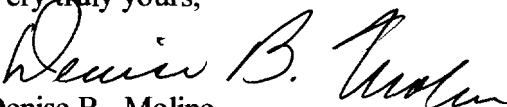
VIA FEDERAL EXPRESS

Dear Ms. Salas:

On behalf of Escanaba License Corp., Petitioner in the above-referenced Rule Making Proceeding, there is transmitted herewith Petitioner's Reply Comments, in response to the Comments submitted by Lakes Radio, Inc.

Should there be any question concerning the attached Reply Comments, please contact undersigned Counsel for Escanaba License Corp.

Very truly yours,

  
Denise B. Moline

DBM:wp  
Attachment

No. of Copies rec'd 044  
List ABCDE

**ORIGINAL**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.**

**RECEIVED  
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In the Matter of )  
 )  
Amendment of Section 73.202(b) ) *MM Docket No. 99-334*  
Table of Allotments, ) *RM 9772*  
FM Broadcast Stations )  
(Carney, Michigan) )

To: Chief, Allocations Branch

***REPLY COMMENTS ON NOTICE OF PROPOSED RULE MAKING***

Escanaba License Corp., (ELC), Petitioner in the above-captioned Docket Proceeding, by Counsel, and pursuant to Section 1.415 of the Commission's Rules (47 C.F.R. §1.415), hereby respectfully submits its Reply Comments on the Notice of Proposed Rule Making (NPRM) in support of the proposed allotment of Channel 260A as a first local transmission service to Carney, Michigan.

Lakes Radio, Inc. ("Lakes") filed Comments in the above-captioned proceeding in which it alleges that Carney, Michigan is not a community for FCC allotment purposes. ELC's own comments, submitted on the same date, refute many of the claims made by Lakes that Carney has insufficient social, economic, governmental or business facilities to qualify as a community. ELC has already submitted evidence that Carney is governed by a Village Council, has its own school, Post Office, financial and religious institutions, telephone exchange and telephone company office, and a number of businesses, including a supermarket, a hotel, and industrial business.

Further evidence is offered herein to show that Carney, Michigan is a separate entity from

the Township and the County, and that Carney should otherwise qualify as a thriving and viable community with a need for its own broadcast outlet.

Carney is a Chartered Village under the laws of the State of Michigan, and is thus a Michigan municipal corporation. It was formally chartered in 1980. A certified copy of the Carney Charter is attached hereto.

Carney is empowered under its Village Charter and the laws of the Michigan, *inter alia*, with the following authority:

1. Acquire land for Village government use; (Section 2.4.a)
2. Regulate and restrict business within the Village; (Section 2.4.c)
3. To provide its own zoning; (Section 2.4.d)
4. To provide and regulate its own systems of water, sewer, disposal, lighting and other public utility;(Section 2.4.e)
5. To promulgate ordinances; (Section 2.4.g, Chapter 6)
6. To promulgate a system of fees and penalties for violation of Village ordinances; (Id.)
7. To issue municipal bonds; (Section 2.4.m)
8. To condemn property for public use; (Section 2.7)
9. To own its own elections for Village Council; (Section 3.1)
10. To levy municipal taxes on real and personal property within the municipality (Chapter 7, section 7.3, Chapter 8)
11. To borrow money; (Chapter 9)
12. To levy special assessments; (Chapter 10)
13. To grant franchises and licences; (Chapter 11)

14. To fix the utility rates for the Village; (Chapter 12)

– in short to exercise all the independent municipal powers granted under Michigan State law for individual governmental entities. Section 7.8 clearly establishes that Carney is separate and distinct from Nadeau Township, as well as from Menominee County, and that Carney must assume separately its own share of township real property and liabilities under its Charter. Carney is entitled to receive its own separate pro rata share of amounts due from distributions of state sales tax receipts, gasoline and motor vehicle weight tax revenues, intangibles tax revenues, or any other state funds and grants required to be distributed to counties, townships, villages under State law.

Thus, Lakes' and Mr. Gerber's intimation that Carney must be considered to be an indistinct part of Nadeau Township is simply wrong.

Additionally, a letter from the Carney Village President, Shirley Charlier, is attached,<sup>1</sup> attesting to the existence of the Village, and testifying that the Village is a "vital and vibrant community." The village has its own municipal water system.

It is true that Carney is a small community. However, the size of the community does not necessarily determine whether the Commission considers it to be a 'community' for allocation purposes. Many small communities, have been found to have sufficient community indicia to qualify as a community. Carney has similar sufficient community indicia to qualify under the FCC's allotment standards. *Cf., e.g., In re Amendment of Section 73.202(b), Table of Allotments FM Broadcast Stations (Bear Lake and Honor, Michigan)* 14 FCC Rcd 8799 (1999)

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<sup>1</sup>The attached letter is a facsimile copy. The original letter will be provided to the Commission when it is received by undersigned Counsel.


(incorporated community of 292 people is a community for allotment purposes); *Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcasting Assignments* (Semora, North Carolina), 5 FCC Rcd 934 (1990) (small rural community not listed in the U.S. Census, having an estimated population of 150, found to be a "community"). In *Mighty-Mac Broadcasting Company*, 101 F.C.C.2d 303 (1985), the Review Board upheld the ALJ's decision that Gulliver, Michigan was a community for allotment purposes, notwithstanding the fact that Gulliver, a small community, was not incorporated. Here, as in *Mighty Mac*, the residents consider their location to be a community, and have further confirmed their belief by obtaining corporate Charter status for the Village.

The other evidence already offered by ELC demonstrating community indicia effectively refutes much of Lakes' contentions. That evidence is not a matter of opinion, but rather of objective evidence, documented with pictures, and bolstered by the indisputable evidence of Carney's independence and community status, attached hereto.

Accordingly, the foregoing considered, ELC respectfully requests that the Commission find that Carney, Michigan is a community for purposes of the FCC's allotment rules, and amend Section 73.202(b) to allot Channel 260A to Carney as its first local transmission service.

Respectfully submitted

***ESCANABA LICENSE CORP.***

By:   
Denise B. Moline  
Its Attorney

*Denise B. Moline, Esq.*  
*PMB #215*  
*1212 So. Naper Blvd., Suite 119*  
*Naperville, IL 60540*

*630-753-0112*


January 27, 2000

## CERTIFICATE OF SERVICE

I, Denise B. Moline, of the law firm of Denise B. Moline, Esq., hereby certify that I have caused to be served, this 27<sup>th</sup> day of January, 2000, a copy of the foregoing "**Reply Comments on Notice of Proposed Rule Making**" by First Class Mail, postage prepaid, on the following:

David D. Oxenford, Esq.  
Dawn M. Sciarrino, Esq.  
Paul A. Cicelski, Esq.  
Fisher, Wayland, Cooper, Leader & Zaragoza, LLP  
2001 Pennsylvania Ave., NW  
Suite 400  
Washington, DC 20006  
Counsel for Lakes Radio, Inc.

Kathleen Scheuerle  
Allocations Branch, Audio Services Division  
Federal Communications Commission  
445 12<sup>th</sup> St., SW., Room 3-A247  
Washington, D.C., 20554

  
Denise B. Moline, Esq.

**VILLAGE OF CARNEY**  
Carney, Michigan 49812

January 26, 2000

TO WHOM IT MAY CONCERN:

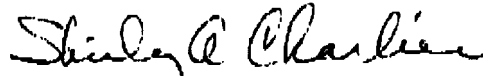
I am the President of the Village of Carney, and I have been the President for the past six years.

The Village of Carney was incorporated in 1980. The Village has its own municipal water system. Although the Village has the authority to levy taxes, it presently does not do so.

Although we are located in a rural area of Michigan's beautiful Upper Peninsula, we consider our Village to be a vital and vibrant community.

Very truly yours

VILLAGE OF CARNEY, a  
Michigan municipal corporation



Shirley Charlier  
Village President



**(~~PROPOSED~~)**  
**CHARTER**  
**of the**  
**VILLAGE OF CARNEY**  
**Menominee County, Michigan**

**FILED**  
MICH. DEPT. OF STATE  
NOV 14 1980  
SECRETARY OF STATE

The Charter of the Village of Carney which will be submitted for approval to the registered electors of the Village on the November 4, 1980 election ballot is published in its complete text on the following pages.

At the same time the elective officers as provided by the Charter shall be elected. For the five seats on the Village Council, the following candidates have been nominated.

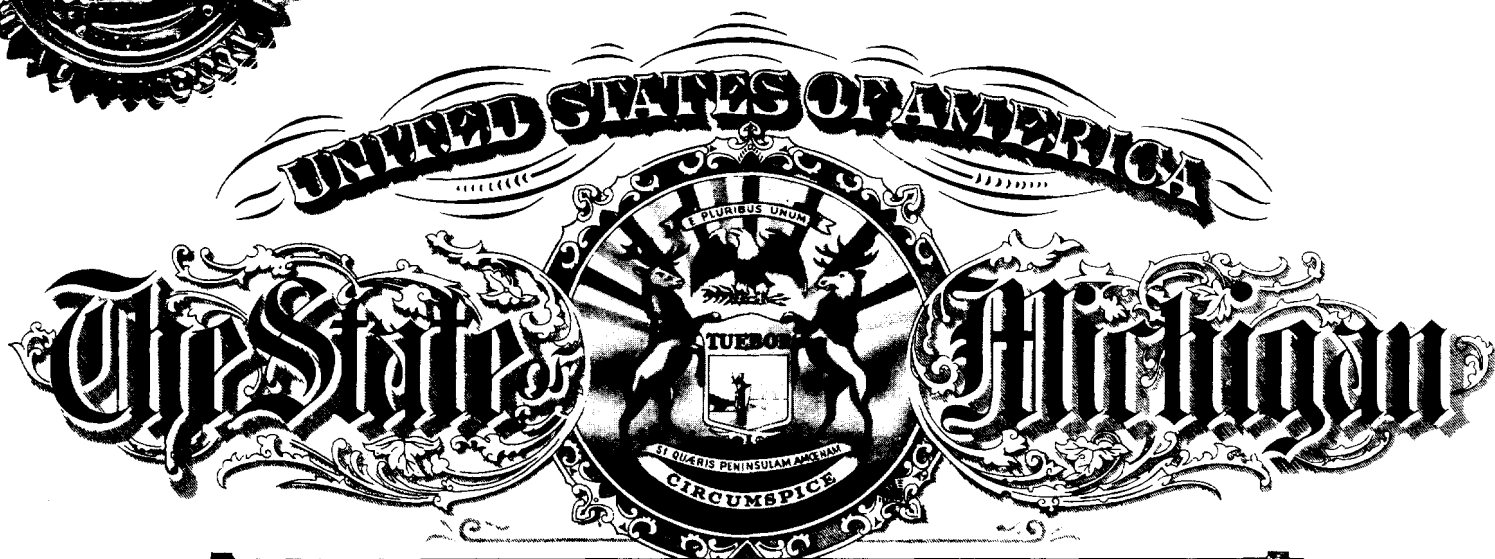
Thomas Bonetti  
Robert Cocco  
Betty Hanchek  
Betty Neece  
Eugene Peterson  
Ronald Solberg  
Gerald Rhode

That candidate receiving the highest number of votes shall serve as Village President.

Running unopposed for the office of Village Clerk will be

James Guard

The Charter Commission expresses its appreciation to the community for its support, and for the opportunity to have served in the drafting of this Charter for the Village of Carney.



## DEPARTMENT OF STATE

**TO ALL TO WHOM THESE PRESENTS SHALL COME:**  
*I, Candice S. Miller, Secretary of State of the State of Michigan  
and Custodian of the Great Seal thereof, Do Hereby Certify that*

the attached is a true copy of the Charter of the Village of Carney, Menominee County, State of Michigan as  
filed with this Department on November 14, 1980.



10020-00

*In Testimony Whereof, I have  
hereunto set my hand and affixed  
the Great Seal of the State in the  
Capital City of Lansing, this*  
day of

A.D. 26th  
2000

January

*Candice S. Miller*  
Secretary of State

CHARTER  
for the  
VILLAGE OF CARNEY  
Menominee County  
MICHIGAN  
PREAMBLE

We, the residents of the Village of Carney, in order to enjoy to the fullest extent the advantages and benefits of local self government as authorized by the Constitution and laws of the State of Michigan, do hereby ordain and establish this charter.

CHAPTER I  
BOUNDARIES AND NAME

Section 1.1 Boundaries. The Village of Carney shall include the following territory situated in Nadeau Township, Menominee County, State of Michigan, bounded and described as follows:

Beginning at the center of section twenty (20), Town thirty seven (37) north, Range twenty six (26) west; thence running west to the southwest corner of SE $\frac{1}{4}$  of NW $\frac{1}{4}$  of section twenty (20); thence south to the section line of said section; then west on said section line to a point on the west line of the right of way of County road C; thence northeasterly and north along said line of right of way to a point 428.5' south and 33' west of the northwest corner of the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of section nineteen (19); thence southwesterly, south 74° 15M west for 322' parallel to the right of way of County road G18; thence north to the point of intersection with the north line of said road, thence northeasterly along said north line for 76.5'; thence north 120'; thence north 74° 15M east for 279.5' paralleling said north line of G18, to the eastline of NW $\frac{1}{4}$  of SE $\frac{1}{4}$  of section nineteen (19); thence running north to the east and west quarter line of section eighteen (18); thence east on said quarter line to the east line of the NW $\frac{1}{4}$  of the SW $\frac{1}{4}$  of section seventeen (17); thence south to the northwest corner of SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of section seventeen (17); thence east to the northeast corner of SE $\frac{1}{4}$  of SW $\frac{1}{4}$ ; thence south to the northwest corner of SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of section twenty (20); thence east to the northeast corner of SW $\frac{1}{4}$  of NE $\frac{1}{4}$ ; thence south to the southeast corner of SW $\frac{1}{4}$  of NE $\frac{1}{4}$ ; thence west to the point of beginning.

Section 1.2 Name. The name of this village shall be Carney.

## CHAPTER 2

### GENERAL MUNICIPAL POWERS

Section 2.1. The Village, as such shall have perpetual succession, shall have and use a corporate seal, and may sue and be sued in all actions or proceedings whatever and take all necessary steps to prosecute and defend the same.

Section 2.2. The Village shall have power to exercise and enjoy all corporate powers conferred upon it by this Charter, expressly or by implication, and all powers, privileges, and immunities, which villages and their officers are, or hereafter may be permitted to exercise under the Constitution and laws of the State of Michigan, including all the powers, privileges, and immunities granted to villages and officers of villages by Act 3 of the Public Acts of 1895, as amended, and all the powers, privileges, and immunities which villages are permitted to or may provide in their charters by Act No. 278 of the Public Acts of 1909, as amended, as fully and completely as though those powers, privileges, and immunities were specifically enumerated in and provided for in this Charter, and in no case shall any enumeration of particular powers, privileges, or immunities in this Charter be held to be exclusive.

Section 2.3. It shall be empowered to take all necessary action to protect the public peace, health and safety, and may perform any act to advance the interests of the village, the good government and prosperity of the municipality and of its inhabitants, and through its regularly constituted authority, shall have power to pass and enforce all laws, ordinances and resolutions relating to its municipal concerns, subject to the Constitution and general laws of the State and the limitations and restrictions of this Charter.

Section 2.4. Without limitation of the generality of the preceding section, the Village shall have power:

(a) To acquire for the Village by purchase, gift, land contract purchase, condemnation, lease, construction or otherwise, either within or without the Village of Carney, property of every type and nature which may be required for or incidental to the present or future exercise of the purpose, powers, and duties of the Village government established by this Charter and may build thereon, and on any property owned or leased by the Village, such buildings or structures as may be necessary to carry out the purposes for which such land is owned or leased.

(b) To receive bequests, gifts, donations and devises of property of any kind or character, wherever situated, or of money, to be held by it either in fee or in trust for the public.

(c) To regulate and restrict trades, occupations, and amusements within its limits.

(d) To provide for the location and regulation of trades and industries, of buildings designed for specific uses, for the limitation of height and bulk of buildings, for the regulation and

determination of the area of yards, courts, and other open spaces, for the regulation and limitation of density of population, and for such purpose to divide the Village into districts or zones.

(e) To purchase, acquire, lease, construct, equip, develop, manage, control and operate, either alone or in connection with or by contract with another municipality or municipalities, a system or systems of water supply and distribution, sewers, sewage disposal, garbage and rubbish disposal, street lighting, and other public utility, works, or services.

(f) To acquire, improve, use, regulate and control streets, alleys and other public places, and the space above and beneath the same.

(g) To establish by ordinance a schedule of fees and penalties for violation of Village ordinances, and to provide for the payment thereof direct to the Village in lieu of arrest and arraignment before a magistrate.

(h) To provide for the use and enjoyment of the surface of its streets and the space above and beneath them.

(i) To provide for the purchase of private property for any public use or purpose within the scope of its powers.

(j) To provide for the use upon the payment of reasonable compensation, by others than the owners, of property located in the streets, alleys and public places and used in the operation of a public utility.

(k) To provide for a plan of streets and alleys within its limits.

(l) To provide for the use, control, and regulation of streams, water, and water courses within its boundaries, but not so as to conflict with the laws of the State.

(m) Issue mortgage bonds beyond the general limits of bonded indebtedness prescribed by law for the acquiring, owning, purchasing, constructing, improving or operating of any public utility; provided, such mortgage bonds issued beyond the general limit of bonded indebtedness prescribed by law shall not impose any liability upon such village, shall be secured only upon the property and revenues of such public utility, including a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate the same, which franchise shall in no case extend for a longer period than twenty years from the date of the sale of such utility and franchise on foreclosure.

(n) Join with any governmental unit or agency, or with any number or combination thereof by contract, or otherwise as may be permitted by law, to perform jointly, or by one or more, for or on behalf of the other or others, any power or duty which is permitted to be so performed by law or which is possessed or imposed upon each such governmental unit or agency.

Section 2.5. The Village shall also have and exercise such powers as are or may hereafter be conferred upon it by law or by this Charter over lands lying beyond its territorial limits.

Section 2.6. No enumeration of particular powers of the Village set forth in this Charter shall be deemed or held exclusive or to forbid the exercise of other powers possessed by villages generally.

Section 2.7. Private property may be taken and appropriated, either within or without the Village, for any public use in connection with any acquisition, enlargement, or extension of municipal public utilities, including, but not by way of limitation, utilities for supplying water, light, heat, power, gas, sewage treatment, and garbage disposal, or any of them; for the purpose of opening, widening, altering, and extending streets, alleys and avenues; for the construction of bridges, for public buildings, and for other public structures; for public grounds, parking spaces, parks, or market places; for the improvement of waters and water courses within the village; for sewers, drains, and ditches; for public hospitals and public cemeteries; and for other lawful and necessary public uses. The ownership of such property may be acquired by the village by negotiation and purchase, or in any other manner permitted by the general laws of the state for the taking of private property for public use. Provided, specifically, that if it shall become necessary to take and appropriate private property for the public uses or purposes specified, in this section, the right to occupy and hold same, and the ownership therein and thereto, may be acquired by the village in the manner, and with like effect, as provided by the general laws of this State relating to the taking of private property for public use in cities and villages, including Act 176 of the Public Acts of 1903 and the acts amendatory thereof and supplemental thereto.

Section 2.8. Where no procedure is set forth in this charter for the exercise of any power granted to or possessed by the Village and its officers, resort may be had to any procedure set forth in any statute of the State of Michigan which was passed for the government of villages or townships, or in any other statute of the State if alternate procedures are to be found in different statutes, then the Council shall select that procedure which is deemed to be most expeditious and to the best advantage of the Village and its inhabitants. Where no procedure for the exercise of any powers of the Village is set forth either in this Charter or in a statute of the State, the Council may prescribe by ordinance a reasonable procedure for the exercise thereof.

Section 2.9. The Village Council shall have authority to vacate, discontinue or abolish any street, sidewalk, alley or public place, or any part thereof, by resolution. Before taking any such action however, the Village Council shall give notice thereof and of the time and place when it will be in public session to hear objections thereto, which notice shall be posted by the Clerk in three (3) public places in the Village at least seven (7) days prior to the date of such meeting.

Section 2.10. When the Village shall own any lands and premises situated outside of its limits, the Village Council shall have power to regulate, by ordinance, the conduct of persons thereon, and to manage and control the same as fully and completely as though said lands and premises were situated within the limits of the Village.

## CHAPTER 3

### PLAN OF GOVERNMENT

Section 3.1. The electors of the Village shall elect a Village Council of five members, one of whom shall serve as Village President, which Council shall constitute the legislative and governing body of the Village and which shall have power and authority, except as in this Charter otherwise provided, to exercise all powers conferred upon or possessed by the Village, and shall have power and authority to adopt such laws, ordinances and resolutions as it shall deem proper in the exercise thereof. The candidate for Council at each regular biennial village election receiving the highest number of votes shall serve as Village President for the ensuing two years. A Village Clerk shall also be elected by the electors of the Village at this same election.

Section 3.2. Members of the Village Council shall be duly qualified electors of the Village who reside within its limits as registered electors. The Council shall be the judge of the election and qualifications of its own members. The elective council members of the Village shall be entitled to receive as full compensation for their services, the following annual salary:

(a) The President and the Clerk shall each receive as remuneration for their services the sum of \$75 per year.

(b) The compensation for the remaining council members shall be the sum of \$50 per year.

Such compensation shall be paid semi-annually and except as otherwise provided in the Charter shall constitute the only compensation which may be paid the President, Clerk, and Council Members for the discharge of any official duty for and on behalf of the Village during their tenure of office. The President, Clerk, and Council Members may be reimbursed for actual expenses actually incurred by them on Village business or in the interest of the Village when such reimbursement is approved by the Council. The compensation of the President, Clerk, and Council Members may be changed by Charter amendment subject to the following provision: The Council shall not grant or authorize extra compensation to any officer, elective or appointive, or to any employee, agent or contractor after the service has been rendered. Nor shall the salary of any officer, elective or appointive, be increased or decreased after election or appointment during any fixed term for which this person was elected or appointed.

Section 3.3. Three Council Members and the Village Clerk shall be elected at each regular Village election. The names of all candidates for Council shall appear on the same ballot, and each

elector shall be entitled to vote for not more than three candidates. The two candidates receiving the highest number of votes shall be elected for four year terms and the candidate receiving the third highest number of votes shall be elected for a two year term. The council member candidate receiving the highest number of votes shall serve as Village President for the ensuing two years.

Section 3.4. Insofar as required by law, and for all ceremonial purposes, the President shall be the executive head of the Village.

(a) The President shall have an equal voice and vote in the proceedings of the Council, but shall have no veto power.

(b) The President shall be the conservator of the peace, and may exercise within the Village the powers conferred upon sheriffs to suppress disorder, and shall have the power to command the assistance of all able-bodied citizens to aid in the enforcement of the ordinances of the Village, and to suppress riot and disorderly conduct.

(c) The President shall authenticate by his or her signature such instruments as the Council, this Charter, or the laws of the State of Michigan or of the United States shall require.

(d) The President shall exercise only such powers as the State law, this Charter, or the Council shall specifically confer upon, or require of him or her.

Section 3.5. The terms of office of the Council Members shall commence on, and date from, the Monday following the canvas and certification of their election.

Section 3.6. Any Village office shall become vacant upon the occurrence of one or more of the following events before the expiration of the term of such office:

(a) For a reason specified by state law creating a vacancy.

(b) If any officer shall be absent continuously from the Village for more than sixty days without the permission of the Council.

(c) In the case of members of the Council, where such officers shall miss three consecutive regular meetings of the Council, or twenty five percent of such meetings in any fiscal year of the Village, unless such absence shall be excused by the Council and the reason thereof entered in the proceedings of the Council.

(d) If the officer shall be convicted of any act constituting misconduct in office under the provisions of this Charter.

(e) In the case of Council Members, upon resignation.

Section 3.7. Any vacancy in the Village Council or in the Offices of President or Clerk shall be filled by vote of a majority of the remaining Members of Council within sixty days after such vacancy shall occur and the person so appointed shall hold office until the expiration of the term for which the Council Member or officer whose seat has become vacant was originally elected. Vacancies in appointed offices shall be filled by vote of the Council,



Section 3.8. The electors of the Village shall elect a Village Clerk at each regular biennial village election.

Section 3.9. The Village Clerk shall be the Clerk of the Village and of the Council, and shall keep, in the English language, a written record or journal of the proceedings of the Council. The Clerk shall keep and preserve all records, files, documents and papers belonging to the Village, and shall keep the Village seal and affix the same to all documents and papers requiring its use. The Clerk shall have charge of the registration of electors and the conduct of all Village elections, and shall perform any other duties required by state law, this Charter, or by the Council. In the absence of the Clerk at any meeting, the Council may choose one of its members to act as Clerk of the meeting.

Section 3.10. The Village Council shall appoint a Village Treasurer who shall be the chief financial officer of the Village, and who shall keep a system of accounts which shall conform to a uniform system required by law, shall collect all taxes, special assessments and other revenues, and hold and disburse the same as required by law, ordinance or resolution of the Village Council, and shall possess all power and authority and perform all duties conferred or imposed upon Village Treasurers generally by the laws of the State of Michigan. The Treasurer shall keep and deposit all monies or funds in such manner and only in such places as the Council may determine. The Treasurer shall perform such other duties as may be prescribed by this Charter or by the Council.

Section 3.11. The Village Council shall appoint a Village Assessor and a Village Superintendent, who shall hold office at the will of the Council, and shall receive such compensation for their services as may be determined from time to time by the Council.

Section 3.12. The Village Superintendent shall be in charge of streets, alleys, and public places and property, shall supervise and manage all public works and services, and shall perform such other duties as the Village Council may from time to time direct. The Superintendent shall also be the Village Marshall and as such shall possess, and may exercise, all powers possessed by peace officers generally under the laws of the State of Michigan. The Superintendent shall have authority to hire such employees and purchase such supplies as may be necessary in performance of duties, not to exceed, however, the budget appropriation for such purposes. The purchase of any item in excess of fifty dollars (\$50) shall be approved by the Village Council.

Section 3.13. The Village Assessor shall determine the value of real and personal property for tax purposes, and shall prepare all assessment rolls, shall spread and apportion all taxes and special assessments, and shall possess all powers vested in and be charged with the duties imposed upon assessing officers generally by the laws of the State of Michigan. The Assessor shall perform such other duties as may be prescribed in this Charter or by the Council.

Section 3.14. The Village Council shall have the power to create by ordinance such additional appointive offices or boards and to authorize by ordinance or resolution the employment of such agents and employees as it may deem necessary for the conduct of the business and affairs of the Village, and to fix the compensation, duties and powers of such officers, agents and employees. The Council may combine such additional offices and/or any office provided for in this Charter in one or more individuals in any manner that it deems to be in the best interests of the Village, except as specifically hereinbefore prohibited.

Section 3.15. The Council shall have the power to require any Village officer or employee, elected or appointed under the authority of this Charter, to give bond for the faithful performance of his/her duties in such amount and with such sureties as the Council shall from time to time determine. Premiums on all such bonds shall be paid by the Village.

Section 3.16. It shall be the duty of the Village Clerk to notify all persons elected or appointed to any village office within seven days after the canvas and certification of their election or appointment. Within seven days after the receipt of such notice all such persons shall take and sign the constitutional oath of office and file any required bond, and any such person failing or neglecting to take such oath or file such bond shall be deemed to have forfeited his office. The Village Council shall have power, by resolution, to extend the time during which any such officer may qualify upon good cause shown.

Section 3.17. In respect to any conflict of interest, all officers of the Village shall abide by the laws of the State of Michigan, namely; 1968 PA 317; MCLA 15.321 et seq.; MSA 4.1700 (51) et seq.

Section 3.18. No Village officer or employee shall be paid by fees, and all fees and charges paid to or collected by any Village officer or department under this Charter, or under the laws of the State of Michigan or the ordinances of the Village, shall belong to and shall be paid into the Village Treasury.

## CHAPTER 4

### ELECTIONS

Section 4.1. The Village wards and voting precincts shall be governed by the Michigan election law.

Section 4.2. The inhabitants of the Village having the qualifications of registered electors under the Constitution of the State, and no others, shall be registered electors therein.

Section 4.3. The regular Village election shall be held on the first Tuesday in November in each even-numbered year. Special elections may be held upon the call of the Village Council at least sixty days in advance of such election or when required by this Charter or the general laws of the State of Michigan, provided, however, that not more than two special elections may be held in any one calendar year. Except as otherwise specifically provided in this Charter, the general laws of the State of Michigan covering the registration of voters and the conduct of elections shall apply to and control registrations and elections in the Village of Carney. The Village Clerk shall have charge of the registration of electors and the conduct of the Village elections.

Section 4.4. For each Village election the Clerk shall appoint an Election Commission consisting of three duly qualified registered electors of the Village and shall designate the chairperson. The Village Council shall in advance of each election determine the compensation of such Election Commission. Such Commission shall have all power and authority conferred on Election Commissions generally by State law.

Section 4.5. Candidates for any elective offices shall be nominated by nominating petition signed by not less than ten nor more than twenty registered electors of the Village and filed with the Village Clerk on or before the seventh Tuesday prior to the biennial Village election. No person shall sign his/her name to a greater number of petitions for any one office than there will be persons elected to said office at said election. Where any signature appears on more petitions than there are candidates to be elected to said office, such names shall be counted only in the order of the respective dates of signing as shown on the petition. Upon the filing of such petition the Clerk shall determine the sufficiency thereof, and if the Clerk finds that the same does not contain the required number of signatures or is in any other manner defective, he shall forthwith notify the candidate, who may file an amended petition within five days after the last day for filing the original petition. The written consent of the nominee to be a candidate for such office shall accompany all such petitions that are not filed by the nominee.

Section 4.6. The form of petition shall be substantially as that required by state law for state and county officers, except for references to political parties. Official petition forms shall be supplied by the Clerk, however, candidates may have their own nominating petitions printed, as long as they are substantially in conformance with the statutory form.

Section 4.7. The form of the ballot used in Village elections shall conform as nearly as may be to that prescribed by the general laws of the state, except that no party designation or emblem shall appear upon any village ballot. The names of qualified nominees for each office shall be listed in a single column in alphabetical order. In all other respects the printing and numbering of ballots and the voting and counting thereof shall conform to the general laws of the state relating to elections.

Section 4.8. Notice of the time and place of holding any election, and of the officers to be elected, and the questions to be voted on, shall, except as herein otherwise provided, be given by the Clerk, at least ten days before such election, by posting such notices in three public places in the Village, and by publishing a copy thereof in a newspaper of general circulation in the Village, the same length of time before the election; and in the case of a special election, the notice shall set forth the purpose and object of the election as fully as the same are required to be set forth in the resolution appointing such election. A second notice of election, being a repetition of the first, shall be published in a newspaper of general circulation in the Village one week after the first so as to conform to the requirements of the Michigan election law, 1954 PA 116, MCLA 168.653; MSA 6.1653.

Section 4.9. The polls of all elections shall be opened and closed at the time prescribed by law for the opening and closing of polls at state elections. The Council shall arrange for and provide a polling place and for the ballots and all necessary election supplies.

Section 4.10. The Board of Canvassers as constituted by state law shall canvass the votes cast in all elections.

Section 4.11. A recount of the votes cast at any village election for any office or upon any proposition may be had in accordance with the general election laws of the state.

Section 4.12. Any elected official may be removed from office by the electors of the Village in a manner provided by the general laws of the state. A vacancy created by the recall of any elected official shall be filled in the manner prescribed by law.

CHAPTER 5  
COUNCIL PROCEDURE

Section 5.1. The Council shall provide by resolution for the place and time of its regular meetings and shall hold at least one regular meeting each month. If any time set for the holding of a regular meeting of the Council shall be a holiday, then such regular meeting shall be held at the same hour and place on the next secular day which is not a holiday.

Section 5.2. Special meetings of the Council may be called at any time by the President or by any three (3) members of the Council. At least six (6) hours notice of any such special meeting, stating the time, place and purposes thereof, shall be given by leaving the same at the regular abode of each member of the Council. Action taken at any special meeting of the Council at which all members are present shall be valid and legal in all respects without such notice. No business shall be transacted at any special meeting of the Council unless the same has been stated in the notice of such meeting. However, if all the members of the Council are present at any special meeting of the Council then any business which might lawfully come before a regular meeting of the Council may be transacted at such special meeting. All meetings of the Council, regular or special, shall be open to the public, and rules of the Council shall provide that citizens shall have a reasonable opportunity to be heard

Section 5.3. A majority of the members of the Village Council shall constitute a quorum for the transaction of business and the exercise of the powers conferred upon the Council, but a lesser number may adjourn from time to time. The action of a majority of the members present at any meeting of the Council at which a quorum is present shall constitute the action of the Council except as in this Charter otherwise specifically provided.

Section 5.4. All votes shall be by "Aye" and "No", and upon all votes which are not unanimous the Aye and No vote of each member shall be recorded in the minutes of the proceeding. The Council shall determine the rules of its proceedings and shall keep a journal which shall be signed by the President and the Clerk. Absence from three (3) consecutive regular meetings shall operate to vacate the seat of a member of the Council unless such absence be excused by the Council by resolution. The Council may, by majority vote, compel the attendance of its members.

Section 5.5. All Village records and the minutes of all proceedings of the Village Council shall be open to public inspection at all reasonable times, provided, however, that the Clerk or other officer having charge thereof may adopt reasonable rules and regulations governing the inspection of such records for the purpose of safeguarding the same.

Section 5.6. No member of the Village Council shall vote on any question in which he is financially interested (other than the common public interest) or on any question concerning his own official conduct.

## CHAPTER 6

### LEGISLATION

Section 6.1. All legislation of the Village of Carney shall be by ordinance or by resolution. The word "resolution" as used in this Charter shall be by the official action of the Council in the form of a motion, and such action shall be limited to matters required or permitted to be done by resolution by this Charter or by state or federal law and to matters pertaining to the internal affairs or concerns of the Village government. All other acts of the Council, and all acts carrying a penalty for the violation thereof, shall be by ordinance. Each ordinance shall be identified by a number and a short title. Each proposed ordinance shall be introduced in written or printed form. The style of all ordinances passed by the Council shall be, "The Village of Carney ordains:"

Section 6.2. Ordinances may be enacted, amended, or repealed by the affirmative vote of not less than three Council members. Unless by the affirmative vote of three Council members, no office shall be created or abolished, no tax or assessment be imposed, no street, alley, or public ground be vacated, no real estate or any interest therein be sold or disposed of, no private property be taken for public use, nor any vote of the Council be reconsidered or rescinded at a special meeting, nor any money appropriated except as otherwise provided by this Charter.

Section 6.3. The time when any ordinance shall take effect shall be prescribed therein, which time shall not be less than twenty days after date of passage, except in the case of ordinances declared by the Council necessary to the preservation of the public peace, health and safety which ordinances may be given immediate effect. All ordinances shall be signed by the President, and the Clerk, and shall be recorded at length in an Ordinance Book to be kept by the Clerk for that purpose. No ordinance shall become effective until published as required by Section 6.4, except that in case an ordinance is given effect earlier than ten days after its enactment, all requirements for publication may be met by immediately posting copies thereof in conspicuous locations in three public places in the Village.

Section 6.4. All ordinances shall be published once within one week of their passage by posting the same in three public places within the Village\*. The Clerk shall, immediately after such posting, enter in the Ordinance Book under the record of the ordinance a certificate in writing stating the time and place of such publication by posting, which certificate shall be prima facie evidence of the due publication and posting of the ordinance.

\*Publishing shall also be required in a local newspaper.

Section 6.5. No ordinance shall be revised, altered or amended by reference to its title only, but the section or article of the ordinance revised, altered or amended shall be reenacted and published, as required by this Charter. Ordinances or sections may be repealed by reference to title for to section and title.

Section 6.6. The Village Council may adopt any provision of State law or any detailed technical regulations, such as building codes, plumbing codes, electrical codes, etc., as Village ordinances by reference to any recognized standard code, official or unofficial, without recording the same at length in the Book of Ordinances. Where such adoption is made, all requirements for publication may be met by providing an adequate supply, not less than fifty copies, of any such detailed code for free public distribution, and the requirements for publication of any amendment to or revision of such adopted code or regulations may be met in the same manner.

Section 6.7. The Village Council shall have the authority to order the compilation and printing or duplicating of a code of ordinances containing all ordinances of general application in effect in the Village from time to time. At least 100 copies of any such compilation or code shall be prepared, and the same shall be kept in the office of the Clerk for free public distribution.

Section 6.8. Whenever it shall be necessary to prove any ordinance of the Village in any judicial proceeding, the same may be proved from the record thereof kept by the Clerk, by a copy thereof duly certified by the Clerk under the seal of the Village, or from any volume or compilation of ordinances printed or duplicated by authority of the Village Council. Prosecutions for violations of the ordinances of the Village may be commenced by complaint and warrant, and all process in any such cases shall be in the name of "The People of the State of Michigan."

Section 6.9. The Council may provide in any ordinance for the punishment of those who violate its provisions. The punishment for the violation of any Village ordinance shall not exceed the fine or imprisonment permitted by law.

Section 6.10. Every ordinance or resolution granting any franchise or right to occupy or use the streets, highways, bridges, or public places in the Village for any purpose shall be complete in the form in which it is finally to be passed and remain on file with the Clerk for public inspection for at least one week before final passage or adoption thereof.

Section 6.11. The Council shall by ordinance prescribe the terms and conditions upon which licenses may be granted, suspended or revoked; and may require an exact payment of such reasonable funds for any licenses as it may deem proper. The persons receiving the licenses shall, before the issuing thereof, execute a bond to the Village, when required by any ordinance, in such sum and with such securities as described by such ordinance, conditioned for the safe observance of the Charter of the Village, and the ordinance under which the license is granted.

Section 6.12. Through the departments and agencies of the Village government, the Council shall provide for the public peace and health, and for the safety of persons and property. The Council shall constitute the Board of Health of the Village, and it and its officers shall possess all powers, privileges and immunities granted to boards of health by State law.

Section 6.13. The Council shall provide forthwith for maintenance by some employee, department, or agency of the Village government of a system of accounts which shall conform to any uniform system required by law.

Section 6.14. An ordinance may be initiated by petition, or a referendum on an ordinance enacted by the Council may be had, by a petition, as hereinafter provided.

Section 6.15. An initiatory or referendary petition shall be signed by registered electors of the Village, provided that their number shall equal twenty five percent of the registered electors of the Village, and provided that all signatures shall have been obtained within two months before the date of filing such petition, and provided further that the petition shall be approved as to form by the Village attorney before being circulated. No such petition need be on one paper, but may be the aggregate of two or more petition papers. The form of petition shall follow the general form of petition provided by state law and shall contain a sworn affidavit by the circulator thereof that each signature was made in his/her presence and is the genuine signature of the person it purports to be. Petitions shall be filed with the Village Clerk who shall determine within fifteen days the sufficiency thereof and so certify. If found to be insufficient or improper, the Clerk shall notify forthwith the person filing such petition and fifteen days from such notifications shall be allowed for the filing of supplemental petition papers. When found sufficient and proper, the Clerk shall present the petition to the Council at the next regular meeting.

Section 6.16. Upon receiving an initiatory or referendary petition from the Clerk, the Council shall within thirty days either: (a) If it be an initiatory petition, adopt the ordinance as submitted in the petition; (b) If it be a referendary petition, repeal the ordinance to which the petition refers; or (c) In either case, determine to submit the proposal to the electors.

Section 6.17. Should the Council decide to submit the proposal to the electors, it shall be submitted at the next election held in the Village for any other purpose, or, in the discretion of the Council, at a special election. The result shall be determined by a majority vote of the electors voting thereon, except in cases where otherwise required by the Constitution or laws of the State of Michigan.



Section 6.18. The certification by the Clerk of the sufficiency of a referendary petition shall automatically suspend the ordinance in question pending repeal by the Council or final determination by the electors as the case may be. An ordinance adopted by the electorate through the initiatory proceedings may not be amended or repealed by the Council for a period of two years after the date of the election at which it was adopted and then only by affirmative vote of four Council members. Should two or more ordinances adopted at the same election have conflicting provisions, the one receiving the highest number of votes shall prevail as to those provisions.

## CHAPTER 7

### GENERAL FINANCIAL PROCEDURE

Section 7.1 The fiscal year of the Village of Carney shall commence on the first day of July of each year and shall end on the 30th of June of each year.

Section 7.2. On or before the first Saturday in May of each year the Village President shall prepare a budget for the fiscal year, beginning July 1, next, which shall contain the items and information as required by the uniform budget and accounting act, 1978 PA 621, 15; MCLA 141.435; MSA5.3228(35)

Section 7.3. At its regular meeting in the month of May, the Village Council shall consider the budget as prepared and submitted by the President and shall pass an annual appropriation ordinance based upon such budget as approved or amended by the Council, and shall provide for the levy of such taxes as may be necessary to meet the appropriations made, less the estimated amount of revenue from sources other than taxation. The aforesaid levy shall not exceed one fourth of one percent of the

assessed valuation of all real and personal property subject to taxation in the Village, exclusive of any levy required for the payment of principal and interest on outstanding bonds, notes or warrants of the Village; provided, however, that this tax limitation may be increased for a period of not to exceed three years at any one time to not more than one and one half percent of the assessed valuation of all real and personal property subject to taxation in the Village by a majority vote of all Village electors qualified to vote in the election of Council members, and provided further that a majority is hereby held to mean a majority of the persons voting on that specific question at any election. The Council may provide by resolution that the question be submitted at any regular election or at a special election called for that purpose.

Section 7.4. Notice of submission of the budget to the Council and of the time and place the same will be considered and acted upon by the Council shall be given by the Village Clerk by posting the same in three public places in the Village at least one week in advance of the meeting of the Council at which said budget is to be considered and acted upon. Publication of the proposed budget shall be required at least six days prior to the hearing in a newspaper of general circulation within the Village.

Section 7.5. No liability shall be incurred by any officer or employee of the Village except in accordance with the provisions of the annual appropriation ordinance. The Council may transfer any encumbered appropriation balance or any portion thereof from one department, fund, or agency to another. The balance of any appropriation which has not been encumbered at the end of the fiscal year shall revert to the general fund and may be reappropriated during the fiscal year.

Section 7.6. The Council shall designate a depository or depositories for Village funds, and shall provide for the regular deposit of all Village monies. The Council shall provide for such security for Village deposits as is authorized or permitted by the laws of the State, except that personal surety bonds shall not be deemed proper security.

Section 7.7. The Village accounts shall be audited periodically by an independent Certified Public Accountant to be selected and employed by the Village Council and paid out of funds of the Village.

Section 7.8. The Council shall, as promptly as possible, arrange a settlement with Nadeau Township whereunder the Village share of the real property and liabilities of said township shall be accepted and assumed by the Village in accordance with the provisions of Section 10 of Act 278 of the Public Acts of 1909, as amended in the 1947 Regular Session of the Legislature. The Council shall forthwith proceed to obtain for the Village its pro rata share of amounts hereafter due Nadeau Township and due the Road Commission of Menominee County in respect of population in such Township from any future distribution of state sales tax receipts, gasoline and motor vehicle weight tax revenues, intangibles tax revenues, or any other state funds, monies

or grants which, by law, are required to be distributed among cities, villages, townships and/or counties of the state, in accordance with the provisions of Section 10 of Act 278 of the Public Acts of 1909, as amended in the 1947 Regular Session of the Legislature.

Section 7.9. The first Council elected under this Charter shall have the authority to make any interim budget required to defray the cost of operating the Village until July 1, 1980, and the expenses incurred by the Charter Commission. Any funds required to meet such budget which are necessary in addition to other revenues received by the Village before July 1, 1980, shall be paid out of any taxes collected in the year beginning July 1, 1980. If necessary, the first Council may borrow money necessary for these expenses, such loans to be made upon the full faith and credit of the Village to be repaid out of the general taxes first collected.

## CHAPTER 8

### TAXATION

Section 8.1. In order to carry out the purposes and powers of the Village established by this Charter, the Village shall have the power and authority to levy and collect general property taxes within the Village. The subjects of taxation for Village purposes shall be the same as for State, County, and school purposes under the general law. The Village shall have the power to impose such other taxes as may be authorized by state law.

Section 8.2. Until otherwise provided by state law, the 31st day of December in each year shall be the tax day for real and personal property in the Village for tax purposes during the following calendar year.

Section 8.3. The provisions of state law for the preparation and review of village assessment rolls in villages organized under the provisions of Public Acts 1895, No. 3, as amended, by the township in which the village is located, shall apply to the Village of Carney. In case it should be necessary for this Village to prepare an independent assessment roll, the Village Council shall have the authority to provide for the preparation of such roll by the Village Assessor and for the establishment of a board of review, and in such case the Village Assessor and the Village Board of Review shall have the same powers and duties as provided for by state law in connection with the preparation of an assessment roll and review thereof by townships.

Section 8.4. After the Village Council has adopted the budget for the ensuing year, the Assessor shall proceed forthwith to spread upon the assessment roll the total amount which the Village Council has determined shall be raised by general tax; all amounts of special assessments which the Village Council requires to be assessed or reassessed upon any property or against any person; and all other amounts which the Village Council may determine shall be charged, assessed or reassessed against any person or property. The Assessor shall spread the amounts of the general Village tax according to and in proportion to the several valuations set forth in said assessment roll. For the purpose of avoiding fractions in computation the Assessor may add to the amount of the several taxes to be raised not more than the amount authorized by the General Property Tax Law, said excess to belong to the Village.

Section 8.5. After extending the taxes aforesaid and not later than the 15th day of June in each year, the Assessor shall certify said tax roll, and the President shall annex his warrant thereto, directing and requiring the Treasurer to collect from the several persons named in said roll the several sums mentioned therein opposite their respective names as a tax or assessment, and granting to him or her, for the purpose of collecting

the taxes, assessments, and charges on such roll, all the power and immunities possessed by township treasurers for the collection of taxes under the general laws of the state.

Section 8.6. The village taxes thus assessed shall become at once a debt due the village from the persons to whom they are assessed, and the amounts assessed on any interest in real property shall on the 1st day of July become a lien upon such real property, and the lien for such amounts and for all interest and other charges thereon shall continue until payment thereof. All personal taxes shall also be a first lien, prior, superior, and paramount, upon all personal property of the persons so assessed from and after the first day of July in each year and shall so remain until paid, which said tax liens shall take precedence over all other claims, encumbrances and liens upon said personal property whatsoever, whether created by chattel mortgage, execution, levy, judgment, or otherwise, and whether arising before or after the assessment of said personal taxes, and no transfer of personal property assessed for taxes thereon shall operate to divest or destroy such lien except where such personal property is actually sold in the regular course of retail trade.

Section 8.7. The Treasurer shall not be required to call upon the persons named in the village tax roll, nor to make personal demand for the payment of taxes, but he or she shall give notice to the taxpayers of the village, by publication in a legal newspaper of general circulation in the village at least once, which publication of notice shall be made at least ten (10) days prior to the first day of July in each year, of the time when said taxes will be due for collection by first class mail addressed to the owners of the property upon which taxes are assessed according to the names of such owners and their addresses as indicated on the tax roll, which notice shall be deemed sufficient for the payment of all taxes on said tax roll. Failure on the part of the Treasurer to give said notices shall not invalidate the taxes on said tax roll nor release the person or property assessed from any penalty or interest provided in this chapter in case of non-payment of same.

Section 8.8. Village taxes shall be due and payable on the first day of July of each year and may be paid at the Office of the Village Treasurer during regular business hours until and including August 31. To all taxes paid after August 31, there shall be added a four (4) per cent penalty, and to all taxes paid after August 31, there shall also be added interest at the rate of one (1) per cent for each month or a fraction of a month intervening between August 31st and the date of payment. The added penalties and interest herein provided shall belong to the village and shall constitute a charge and shall be a lien against the property to which the taxes themselves apply, collectible in the same manner as the taxes to which they are added.

Section 8.9. If the Treasurer has been unable to collect any of the village taxes on said roll on real property before the first day of October following the date when said roll was received by him or her, it shall be his or her duty to return all such unpaid taxes on real property to the county treasurer in the same manner and with like effect as returns by township treasurers of township, school and county taxes. Such returns shall be made upon a delinquent tax roll to be prepared by the Treasurer and shall include all the additional charges and fees hereinbefore provided, which charges shall, in such return, be added to the amount assessed in said tax roll against each description. The taxes thus returned shall be collected in the same manner as other taxes returned to the county treasurer are collected under the provisions of the general laws of the state and shall be and remain a lien upon the lands against which they are assessed, until paid.

Section 8.10. The Village shall have power, insofar as the exercise thereof shall not conflict with or contravene the provisions of any general law of the state, to acquire by purchase any premises within the Village at any tax or other public sale, or by direct purchase from the State of Michigan or the fee owner when such purchase is necessary to protect the lien of the Village for taxes or special assessments, or both, on said premises and may hold, lease, or sell the same solely for the purpose of securing therefrom the amount of such taxes or special assessments, or both, together with any incidental expenses incurred in connection with the exercise of this power. Any such procedure exercised by the Village in the protection of its tax lien shall be deemed to be for a public purpose.

## CHAPTER 9

### BORROWING POWERS

Section 9.1. The Village Council may borrow money for any lawful purpose, subject to the Constitution and general laws of the State of Michigan, and may issue bonds or other evidences of indebtedness therefor. Bonds may be in the form of general obligation bonds, mortgage bonds, revenue bonds, special assessment bonds, tax anticipation bonds, refunding bonds, and emergency bonds, together with such other types of bonds, notes or other evidence of indebtedness as now are or may hereafter be authorized or permitted by the laws of the State of Michigan. Each bond or other evidence of indebtedness shall contain on its face a statement specifying the purpose for which the same is issued, and it shall be unlawful for any officer of the Village to use the proceeds thereof for any other purpose, and any officer who shall violate this provision shall be deemed guilty of misconduct in office. All such bonds shall be signed by the President, or the

President Pro Tempore, and attested by the Clerk under the seal of the Village. Coupons evidencing the interest upon such bonds, however, may be executed with the facsimile signatures of the President, or of the president Pro Tempore, and the Clerk.

Section 9.2. At no time shall the bonded indebtedness of the Village, exclusive of special assessment bonds, mortgage bonds, and revenue bonds, exceed ten percent (10%) of the assessed valuation of all taxable property in the Village as shown by the last preceding assessment roll.

Section 9.3. The Village Council may borrow in any one year for current purposes such amount as may be permitted by the laws of the State of Michigan, and such money may be borrowed from any Village fund which will not be in need of the money previous to its payment, or on tax anticipation notes as provided for or permitted by state law. The budget for the next succeeding fiscal year shall include a sum sufficient to pay all such loans and the interest thereon, and the same shall be paid on or before September 30th of such succeeding fiscal year.

Section 9.4. No bonds, except special assessment bonds, tax anticipation bonds, refunding bonds, emergency bonds for the relief of fire, flood or calamity, bonds for the payment of judgments, temporary loans and revenue or mortgage bonds issued for the purpose of acquiring, construction or extending public utilities and which are not general obligations of the Village, shall be issued by the Village Council unless approved by a majority of electors of the Village voting upon such proposition at an

election or special election duly called and held for that purpose.

## CHAPTER 10

### SPECIAL ASSESSMENTS

Section 10.1. The Village Council shall have the power to provide for the payment of all or any part of the cost of acquiring, constructing, reconstructing, improving, paving, or altering, streets, alleys, sewers, drains, sidewalks, or any structure or work in the nature of public improvement, by levying and collecting special assessments upon property specifically benefited, such assessments to be levied in accordance with frontage or benefits, in the discretion of the Council

Section 10.2. When the Village Council shall determine to defray the whole or any part of the cost of any public improvement by special assessment, it shall so declare by resolution, stating the nature of the improvement, the estimated cost thereof, the portion of the cost to be paid by special assessment, and the portion if any, to be paid from the general funds of the Village, shall designate the district or lands and premises upon which such special assessments shall be levied, shall determine whether such assessment shall be levied according to frontage or benefits, and shall set a time and place at which the Council will be in public session to hear objections to such improvement and to the special assessment levied to pay the cost thereof and to review and consider such special assessment roll.

Section 10.3. The Village Assessor shall thereupon prepare an assessment roll, and shall enter and describe thereon all of the lands and premises to be assessed, together with the names of the persons, if known, owning such lands and chargeable with the assessment thereon, and shall assess the cost of such public improvements against said lands and premises in the manner directed by the Village Council. When such roll has been completed, it shall be endorsed by the Assessor and filed by him or her with the village Clerk.

Section 10.4. Upon the filing of such assessment roll, the Village Clerk shall give notice thereof and of the proposed improvement and of the district to be assessed, and that said roll is on file in the Clerks office for public inspection, and of the time and place when the Council will be in session to consider and review said roll and hear objections to the improvement and to the special assessment levied therefor, which said notice shall be given by posting the same at three public places within the Village at least seven days prior to the date of the meeting of the Council at which said roll is to be considered and objections heard.



Section 10.5. At the time and place appointed for such purpose, the Village Council and the Village Assessor shall meet and review said assessment roll and hear all objections to such public improvement and to assessment levied to pay the cost thereof, and the Council may correct the said assessment toll and may confirm the same as reported or corrected.

Section 10.6. If, at or prior to final confirmation of any special assessment, more than fifty (50) per cent of the number of owners of privately owned real property to be assessed for any improvement, or in case of paving or similar improvements more than fifty (50) per cent of the number of owners of frontage to be assessed for any such improvement, shall object in writing to the proposed improvement, the improvement shall not be made by proceedings authorized by this chapter without a four-fifth (4/5) vote of the members of the Council.

Section 10.7. Upon the confirmation of such special assessment roll by the Council, the said special assessment roll shall be final and conclusive, and the special assessment shall from the date of confirmation constitute and be a lien until paid upon the respective lots and parcels of land assessed, of the same character and effect as the lien created by general law for state, county and school taxes.

Section 10.8. Except and unless notice is given to the Council in writing of an intention to contest or enjoin the collection of any special assessment for the construction of any pavement, sewer, or other public improvement, the construction of any sidewalk, or the removal or abatement of any public hazard or nuisance, within thirty days after the date of the meeting of the Council at which it is finally decided to proceed with the making of the improvement in question, which notice shall state the grounds on which the proceedings are to be contested, no suit or action of any kind shall be instituted or maintained for the purpose of contesting or enjoining the collection of such special assessments; and regardless of whether or not any public improvement is completed in any special assessment district, no owner of real property located in such district shall be entitled to commence any suit or action for the purpose of contesting or enjoining the collection of such special assessments after this person has received the benefits from the substantial completion of that portion of such public improvement for which he or she is assessed.

Section 10.9. The Council may provide for the payment of special assessments in annual installments, not to exceed 15 in number, the first installment being due upon confirmation of the roll and the deferred installments being due annually thereafter or, in the discretion of the Council, may be spread upon and made a part of each annual village tax roll thereafter until all are paid. Interest may be charged upon deferred installments at a rate not to exceed ten per cent per year payable annually. Under any installment plan adopted, the whole or any deferred installments with accrued interest to date of payment may be paid in advance of the due dates established.

Section 10.10. The same penalty and interest shall be paid upon delinquent installments of such assessment as is provided by this Charter to be paid upon delinquent general Village taxes, and such penalties and interest shall begin to accrue on September 1 next following the due date of each installment. Delinquent installments of such special assessments shall be returned to the County Treasurer for collection at the same time and in the same manner as are delinquent general taxes.

Section 10.11. When any special assessment roll shall prove insufficient to meet the costs of the improvements for which it was made, the Council may make an additional pro rata assessment, but the total amount assessed against any one parcel of land shall not exceed the value benefits received by said lot or parcel of land.

Section 10.12. Whenever the Council shall deem any special assessment invalid or defective for any reason whatever, or if any court or competent jurisdiction shall have adjudged such assessment to be illegal for any reason whatever, in whole or in part, the Council shall have power to cause a new assessment to be made for the same purpose for which the former assessment was made, whether the improvement or any part thereof has been completed or not, and whether any part of the assessment has been collected or not. All proceedings on such reassessment and for the collection thereof shall be made in the same manner as provided for in an original assessment. If any portion of the original assessment shall have been collected and not refunded, it shall be applied upon the reassessment and the reassessment to that extent shall be deemed satisfied. If more than the amount reassessed shall have been collected, the balance shall be refunded to the persons making such payments.

Section 10.13. If, upon completion of any such public improvement, it shall appear that there be a surplus in the amount raised by special assessment of more than five per cent of the actual cost of such improvement, such surplus shall be refunded pro rata as follows: By refund where the tax has been paid in full, and by credit upon the assessment roll, and upon the last installment or installments thereof if divided into installments, where the assessment has not been paid in full. If such surplus be five per cent or less, the same may be transferred to the general fund of the Village.

Section 10.14. Revenues raised by special assessment to pay the cost of any public improvement shall be credited to a separate special assessment fund and shall be used solely for the purposes specified.

Section 10.15. No judgment or decree or any act of the Council vacating a special assessment shall destroy or impair the lien of the Village upon the premises assessed, for such amount of the assessment as may be equitably charged against the same, or as by a regular vote or proceeding might have been lawfully assessed thereon.

Section 10.16. The Village Council shall have authority to raise money by loan in anticipation of the receipts from special assessments for the purpose of defraying the cost of the public improvement for which the assessment was levied. Bonds or notes may be issued evidencing such loans, not to exceed the amount of the assessment, subject to the laws and Constitution of this State. All such loans shall be due not more than one year subsequent to the due date of the final installment of such special assessment. The full faith and credit of the Village shall be pledged for the payment of all such assessment bonds or notes, and the same shall be general obligations of the Village.

## CHAPTER 11

### FRANCHISES-LICENSES

Section 11.1. No franchise or grant which is not revocable at the will of the Council shall be granted or become operative until the same shall have been referred to the people at a regular or special election and shall have received the approval of three-fifths of the electors voting thereon at such election. All irrevocable public utility franchises and all renewals, extensions and amendments thereof shall be granted only by ordinance. No such ordinance shall be approved by the Council for presentation to the electorate before thirty (30) days after application therefor has been filed with the Council, nor until a public hearing has been held thereon. No such ordinance shall be submitted to the electors at an election to be held less than thirty (30) days after the grantee named therein has filed with the Clerk its unconditional acceptance of all of the terms of such franchise, and it shall not be submitted to a special election unless the expense of holding the election, as determined by the Council shall have been paid to the Treasurer by the grantee. No exclusive franchise shall ever be granted, and no franchise shall be granted for a longer term than thirty (30) years and no license for longer than one (1) year.

Section 11.2. The Council shall cause to be instituted such actions or proceedings as may be necessary to prosecute a public utility company for violation of its franchise, the Village Charter, or ordinances of the Village, and may revoke, cancel or annul all franchises that may have been granted by the Village which, for any reason, have become inoperative, illegal, or void and not binding on the Village.

Section 11.3. The enumeration and specification of particular matters in this Charter which must be included in every franchise or grant shall never be construed as impairing the right of the Council to insert such franchise or grant any other and further matters, terms or conditions as may be within the power of the Village to impose or require and which the Council shall deem proper to protect the interests of the people of the Village.

Section 11.4. All public utility franchises granted after the adoption of this charter, whether it be so provided in the granting ordinance or not, shall be subject to the right of the Village:

(a) To repeal the same for misuse, or non-use, or for failure to comply with the provisions thereof;

(b) To require proper and adequate extension of plant and service and maintenance thereof at the highest practical standard of efficiency;

(c) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates;

(d) To require conditions and uninterrupted service to the public in accordance with the terms of the franchise throughout the entire period thereof;

(e) To impose such other regulations as may be determined by the Council to be conducive to the safety, welfare, and accommodation of the public.

Section 11.5. All public utility franchises shall make provision therein for fixing rates, fares, and charges, and for readjustments thereof at periodic intervals at the discretion of the Village. The value of the property of the utility used as a basis for fixing such rates, fares, and charges shall in no event include a value predicated upon the franchise, goodwill, or prospective profits.

Section 11.6. Every public utility franchise shall be subject to the right of the Village to use, control, and regulate the use of its streets, alleys, bridges, and public places and the space above and beneath them. Every public utility shall pay such part of the cost of improvement or maintenance of streets, alleys, bridges, and public places, as shall arise from its use thereof and shall protect and save the Village harmless from all damages arising from said use; and may be required by the Village to permit joint use of its property and appurtenances located in the streets, alleys, and public places of the Village, by the Village, and by other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental therefor; provided, that in the absence of agreement, upon application by any public utility, the Council shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor, which award shall be final.

## CHAPTER 12

### VILLAGE OPERATED UTILITIES

Section 12.1. The Council shall have the power to fix from time to time such just and equitable rates as may be deemed advisable for supplying the inhabitants of the Village and others with water; with electricity for light, heat and power; and with such other utility services as the Village may provide.

Section 12.2. The Council shall provide by ordinance, for the collection of all public utility charges made by the Village. With respect to water, the Village shall have all the power granted to villages by Act 178 of the Public Acts of 1939, as amended. When any person or persons, or any firm or corporation, shall fail or refuse to pay to the Village any sums due on utility bills, service or services upon which such delinquency exists may be shut off or discontinued and suit may be instituted by the Village for the collection of the same in any court of competent jurisdiction.

Section 12.3. The Village shall not sell, exchange, lease, or in any way transfer or dispose of the property, easements, income, or other equipment, privilege, or asset belonging to and appertaining to any utility which it may acquire, unless and except the proposition for such purpose shall first have been submitted, at an election held for that purpose in the manner provided in this Charter, to the electors of the Village who are qualified to vote on questions involving the direct expenditure of money or the issuance of general obligation bonds of the Village and approved by them by a three/fifths (3/5) majority vote. All contracts, negotiations, licenses, grants, leases or other forms of transfer in violation of this provision, shall be void and of no effect as against the Village. The provisions of this section shall not, however, apply to the sale or exchange of any articles of equipment of any Village owned utility as are worn out or useless or which could, with advantage to the service, be replaced by new and improved machinery or equipment.

## CHAPTER 13

### MISCELLANEOUS PROVISIONS

Section 13.1. The Village shall not be liable for claims for personal injuries or damage to property, regardless of cause, unless the person suffering such injury or sustaining such damage shall serve a written notice upon the Village Clerk within ~~---(120)---~~ days after such injury or damage shall have occurred, which notice shall specify the nature and extent of the injury or damage sustained, the time, place and circumstances of the occurrence thereof, and the names and addresses of all witnesses insofar as the same are known to such claimant. Failure to file such claim at the time and in the manner herein specified shall exonerate the Village from any liability on account of such injury or damage.

Section 13.2. No official of the Village shall have power to make any representation or recital of fact in any franchise, contract, document, or agreement, contrary to any public record of the Village. Any such representation shall be void and of no effect as against the Village.

Section 13.3. The word "person" when used in this Charter shall mean and include natural persons, firms or corporations. The word "written" or "in writing" shall include printing, type-writing, and duplicating, as well as pen and ink writing. The singular number shall include the plural, and the masculine gender shall extend to and include the feminine gender.

Section 13.4. Should any provision, section, article or clause of the Charter be declared void, illegal or unconstitutional, such finding shall not invalidate the remainder of the Charter.

Section 13.5. No estoppel may be created against the Village.

Section 13.6. This Charter may be amended at any time in the manner provided in Act No. 279 of the Public Acts of 1909, as amended. Should two or more amendments, adopted at the same election, have conflicting provisions, the one receiving the highest vote shall prevail as to those provisions.

## CHAPTER 14

### SCHEDULE

Section 14.1. The purpose of this schedule chapter is to inaugurate the government of the Village under this Charter and to accomplish the transition from township government to village home rule government, and it shall constitute a part of this Charter only to the extent and for the time required to accomplish this purpose.

Section 14.2. This Charter shall be submitted to a vote of the qualified registered electors of the proposed village of Carney for adoption as the regular biennial election to be held on the fourth day of November, 1980. All provisions for such election shall be made and such election shall be conducted in the manner provided by law. Proper and sufficient notice of registration and of such election shall be given by publication and posting in the manner prescribed by law. If at such election, a majority of the electors shall vote in favor of the adoption of this Charter, then the Nadeau Township Clerk shall administer the constitutional oath of office to the Village officers elected at the time of this election and shall perform all other acts required by law to carry this Charter into effect and to consummate the organization of the Village.

The form of the ballot for the submission of this Charter shall be in the following form:

"Shall the proposed Charter for the Village of Carney drafted by the Charter Commission elected on April 24, 1979 be adopted?"

YES: (    )  
NO: (    )

Section 14.3. Township registration records shall be available and used in connection with the election and adoption of the Charter of the Village of Carney, and for the first election of the village officers for the Village of Carney. Challenges at the polls shall be handled properly according to the provisions contained in 1954 PA 116, s 727 et seq; and MSA 6.1727 et seq.

Section 14.4. The Charter Commission shall serve as an Election Commission for this first election and the Clerk of the Charter Commission shall be the Clerk of the Election Commission.

Section 14.5. The Charter Commission shall publish this proposed Charter in a newspaper published or of general circulation in the Village at least once not less than two nor more than four weeks preceding the date of such election, together with a notice of



said election and notice that on the date fixed for such election the question of adopting this proposed Charter shall be voted on, and that the elective officers provided for in the Charter will be elected. Copies of the proposed Charter will be made available at three public places in the village and delivered to residents upon request. Notice of such election shall also be posted in ten public places within the village not less than 14 days prior to such election. Notice of the election shall also be published in a newspaper of general circulation within the village ten days prior to such election and published again one week later.

Section 14.6. There shall be elected at said election a Village Council of five members and a Village Clerk. The nomination and election of such elective officers shall be non-partisan. Nomination for the offices of Member of the Village Council and for the office of Village Clerk shall be signed by not less than 10, nor more than 20 registered electors of the Village and filed with the Secretary of the Charter Commission on or before the seventh Tuesday preceding such election. The form of petition shall be substantially as that required by state law for state and county officers, except for references to political parties. Official petition forms shall be supplied by the Township Clerk, however, candidates may have their own nominating petitions printed, as long as they are substantially in conformance with the statutory form. Nominating petition signatures and sufficiency shall be validated by the Township Clerk and filed according to the provisions of Michigan election law.

At such election the electors shall be entitled to vote for not more than five candidates for Council. The candidate for Council receiving the highest number of votes shall serve as President of the Village Council for a term expiring at 8 P.M. on the Monday following the canvass and certification of the regular November biennial election in 1982. The duly elected Village Clerk shall serve a like term as said President. The two Council candidates receiving the first and second highest number of votes shall be declared elected for a term extending two years beyond that of the President and Clerk. The three candidates for Council receiving the third, fourth, and fifth highest number of votes shall be declared elected for the same terms as the President and Clerk. The President reverts to Council member following the November 1982 election to serve out his four year term. Thereafter the successors of all such officers shall be elected at regular Village elections provided by this Charter, commencing with November 1982, the regular biennial election, and shall hold office for the term established thereby.

Section 14.7. It shall be the duty of the Charter Commission to provide a polling place for such election and to provide all necessary ballots and other election supplies. The Board of Canvassers as constituted by state law shall canvass the votes cast in this election.

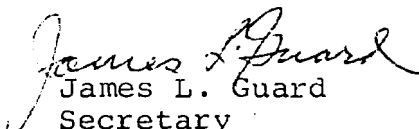
Section 14.8. The Council first elected under this Charter shall assemble in the Nadeau Township Hall at 7:00 P.M. on the Monday following the certification and canvass of this election. It shall be called to order by the Clerk of the Charter Commission, who shall receive the report of the Board of Canvassers. If the Charter has been adopted by the electorate, the Township Clerk shall swear in the Village Council Members and the Village Clerk and the Council shall then take full control of the affairs of the Village as provided in this Charter.

Section 14.9. At the first meeting or as soon as possible thereafter, the President and the Council shall make an estimate of financial needs of the Village for the period between the adoption of the Charter and the commencement of the fiscal year on July 1, 1981 and shall provide for the same by an interim budget and appropriation.

Section 14.10. The first Council shall provide for the defraying of the expenses of incorporation of the Village, including as such as were incurred by the Charter Commission for the framing of this Charter.

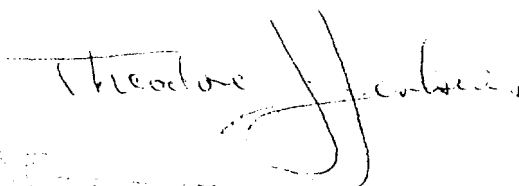

STATE OF MICHIGAN       )  
                                  ) ss  
COUNTY OF MENOMINEE    )

James L. Guard, Secretary of the Charter Commission of the Village of Carney, being duly sworn, says that the following named persons were elected to and comprise the Charter Commission for the Village of Carney, Menominee County, Michigan, as required by Act 278, Public Acts of 1909, as amended, namely, Craig A. Berquist, Betty J. Neece, Alice M. Perras, and Ronald A. Solberg; that the members of said Charter Commission did meet as prescribed by law; that at the first meeting of the Charter Commission, Ronald A. Solberg was elected Chairman and James L. Guard was elected Secretary of the Charter Commission; and that the annexed and foregoing Charter was duly framed and adopted by said Charter Commission and that said Charter Commission directed that said Charter be presented to the electors of the Village of Carney, at the time fixed therein, all in accordance with the requirements of the laws of the State of Michigan which provide therefor.

  
James L. Guard  
Secretary  
Charter Commission  
for the Village of Carney

Dated: September 16, 1980

Subscribed and sworn to before me a Notary Public in and for the County of Menominee this 16<sup>th</sup> day of Sept 1980.

## RESOLUTION OF ADOPTION

At a meeting of the Charter Commission of the Village of Carney held on the 15<sup>th</sup> day of September, 1980, the following resolution was offered by Commissioner Perras.

"Resolved that the Charter Commission of the Village of Carney does hereby adopt the foregoing corrected copy of the proposed Charter for the Village of Carney, and the Clerk of this Commission is directed to transmit a copy thereof to the Governor of the State of Michigan for his approval in accordance with the statutes of the State."

The resolution was seconded by Commissioner Bergquist and adopted by the following vote:

Ayes: 5  
Nays: 0

The Chairman declared the foregoing resolution carried unanimously and requested the members of the Charter Commission to authenticate said resolution and also the copy of the Charter to be presented to the Governor and filed with the County Prosecuting Attorney and the Township Clerk by attesting their names thereto in the following manner:

Attested by Commissioners:

Ray Bergquist  
James L. Guard  
Betty J. Pease  
Alice M. Perras  
Edward A. Sallberg

STATE OF MICHIGAN     )  
                              ) ss  
COUNTY OF MENOMINEE )

James L. Guard, Secretary of the Charter Commission for the proposed Village of Carney, being duly sworn, says that the accompanying sheets of the Proposed Charter for the Village of Carney are the corrected sheets adopted by the Charter Commission for the Village of Carney, Menominee County, Michigan at a meeting held on the 15<sup>th</sup> day of September, 1980. These corrected sheets are to replace their counterparts in the Charter originally submitted to the Governor's office which was approved by the Charter Commission on July 16, 1979 amended and approved on November 5, 1979; and further amended and approved on September 15, 1980. The corrected sheets are comprised as follows:

Section 2.10 - 3.3  
" 3.3 - 3.7  
" 3.14 - 3.18  
" 4.1 - 4.6  
" 4.7 - 4.12  
" 6.6 - 6.11  
" 6.12 - 6.17  
" 6.18 - 7.3  
" 7.3c - 7.8  
" 9.1c - 9.4  
" 14.1 - 14.5  
" 14.5 - 14.6  
" 14.7 - 14.10

- (1) Resolution of Adoption
- (1) Certification of the Secretary of the Charter Commission
- (1) Certification of the corrected above named sheets

*James L. Guard*

James L. Guard  
Charter Commission Secretary  
Village of Carney

Dated: September 15, 1980

Subscribed and sworn to before me a Notary Public in and for the County of Menominee this 16<sup>th</sup> day of September, 1980

THEODORE A. JENSEN  
NOTARY PUBLIC, STATE OF MICH.  
MY COMMISSION EXPIRES SEP 21, 1988

*Theodore A. Jensen*



STATE OF MICHIGAN

OFFICE OF THE GOVERNOR

LANSING

WILLIAM G. MILLIKEN  
GOVERNOR

October 1, 1980

James L. Guard, Secretary  
Charter Commission  
Village of Carney  
Carney, Michigan 49812

Dear Mr. Guard:

Village of Carney - Proposed Home Rule Charter

Notice is hereby given of my approval of the submission of the above-mentioned charter for the Village of Carney to the vote of the people.

Pursuant to statute, charter amendments adopted by the electorate must be filed with the Secretary of State. For your convenience I have enclosed a copy of this approval letter for inclusion in such filing.

Sincerely,

A handwritten signature in cursive script, reading "William G. Milliken".

Governor